

FISCAL AGENT AGREEMENT

by and between

CITY OF PIEDMONT

and

**UNION BANK, N.A.,
as Fiscal Agent**

in connection with

**PIEDMONT HILLS
UNDERGROUND ASSESSMENT DISTRICT**

§ _____
**City of Piedmont
Piedmont Hills
Underground Assessment District
Limited Obligation Improvement Bonds, Series 2009-A**

Dated as of July 1, 2009

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FISCAL AGENT AGREEMENT

This Fiscal Agent Agreement (the “**Agreement**”) dated as of July 1, 2009, is entered into by and between the City of Piedmont (the “**City**”), a municipal corporation of the State of California (the “**State**”) and Union Bank, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as Fiscal Agent (the “**Fiscal Agent**”) in connection with the City’s Piedmont Hills Underground Assessment District (the “**Assessment District**”).

RECITALS:

WHEREAS, the City Council (the “**Council**”) of the City, on May 2, 2005, adopted its resolution of intention (the “**Resolution of Intention**”), relating to the underground of existing overhead and ground-level utility facilities and the replacement of existing street lighting facilities (the “**Underground Project**”) in the Assessment District as described therein pursuant to the provisions of the Municipal Improvement Act of 1913 (the “**1913 Act**”), being Division 12 of the Streets and Highways Code of the State; and

WHEREAS, the Resolution of Intention provided that limited obligation improvement bonds to represent unpaid assessments (as hereinafter defined) and to bear interest at a maximum rate of not to exceed twelve percent (12%) per annum shall be issued in the manner provided by the Improvement Bond Act of 1915 (the “**Act**”), being Division 10 (commencing with Section 8500) of the Streets and Highways Code of the State, and that said bonds would mature not later than twenty-four (24) years from the second day of September next succeeding twelve (12) months from their date; and

WHEREAS, a written engineer’s report containing the matters required by Section 10204 of the 1913 Act was duly prepared and filed with the City Clerk as directed by the Resolution of Intention and, after a public hearing duly noticed and held, the Council, on May 4, 2009, adopted its resolution overruling protests, approving an amended engineer’s report (amended to reflect the results of the construction bid opening for the Underground Project), levying the individual assessments in the amounts recommended by the amended engineer’s report, and approving and ordering the Underground Project; and

WHEREAS, the total costs and expenses of the Assessment District, in the amount of \$4,295,000 were apportioned upon the individual parcels of land in the Assessment District which were determined to receive special benefit in proportion to the estimated benefits to be received by such parcels from the Underground Project, as set forth in the amended engineer’s report (the “**Final Engineer’s Report**”), a copy of which was recorded in the office of the Director of Public Works of the City; and an assessment diagram and Notice of Assessment were recorded in the office of the County Recorder of the County of Alameda, all in the time, form and manner required by law; and

WHEREAS, notices of the assessment were mailed to the property owners in the Assessment District, advising such owners of the entitlement to pay all or any part of the respective individual assessments in cash, without interest and at a discount, and upon the expiration of the time for effecting such cash payments, the City Clerk of the City executed and

submitted to the City Council a Certificate Respecting Paid and Unpaid Assessments, indicating that there remain unpaid assessments in the total amount of \$ _____; and

WHEREAS, certain property owners requested that the City include the cost to underground facilities from the street to such property owners' homes in their Assessments (the "**Supplemental Assessments**"), and the City has agreed to include such costs in the amount of \$ _____; and

WHEREAS, the City has authorized the issuance of limited obligation improvement bonds pursuant to the Act, secured by the unpaid assessments, to complete financing for the Underground Project and the related incidental expenses of the legal proceedings and bond financing for the Assessment District in the amount of the unpaid assessments; and

In consideration of the mutual covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** Unless the context otherwise requires, the following terms shall have the following meanings:

"**Act**" means the Improvement Bond Act of 1915, being Division 10 (commencing with Section 8500) of the California Streets and Highways Code.

"**1913 Act**" means the Municipal Improvement Act of 1913, being Division 12 (commencing with Section 10000) of the California Streets and Highways Code.

"**Administrative Expense Requirement**" means, to the extent authorized by law and the Resolution of Intention, an amount to be specified each year by the Finance Director of the City to be used for Administrative Expenses.

"**Administrative Expenses**" means the ordinary and necessary fees and expenses for determination of the annual installments to be billed and collected on account of unpaid assessments, for administering the levy and collection of said annual installments, and for servicing, calling and redeeming the Bonds, including any and all of the following: the fees and expenses of the City's assessment administrator, the Fiscal Agent (including any fees or expenses of its outside counsel and the allocated costs and disbursements of in-house counsel to the extent such services are not redundant with those provided by outside counsel), the City (including, but not limited to, annual audits and costs incurred in the levying, collecting and enforcing payment of the annual installments, and providing compliance with the obligations of the City to provide for continuing disclosure) including the fees and expenses of its counsel and all other costs and expenses of the City or the Fiscal Agent incurred in connection with the

discharge of their respective duties hereunder and, in the case of the City, in any way related to the administration of the Assessment District.

“**Administrative Expense Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the City.

“**Agreement**” means this Fiscal Agent Agreement, as amended or supplemented pursuant to the terms hereof.

“**Annual Debt Service**” means the amount of the scheduled payments to Bondowners each March 2 and September 2 during a calendar year on account of the principal of and the interest on the Bonds.

“**Assessment**” or “**Assessments**” means the special assessments levied by the City Council of the City on May 4, 2009, as later increased June __, 2009, for specific parcels to finance the costs of individual service connection work on said parcels, in the respective amounts set forth in the Final Engineer’s Report, as modified by the June __ Council action, and in accordance with the Act and the Resolution of Intention.

“**Assessment District**” means the Piedmont Hills Underground Assessment District of the City.

“**Assessment Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the City.

“**Assessment Installment**” means the annual installments representing unpaid principal, accrued interest and the authorized and allocable portion of Administrative Expenses, placed on the property tax bill of each parcel within the Assessment District having an Unpaid Assessment.

“**Authorized Denominations**” means \$5,000 or any integral multiples thereof.

“**Average Annual Debt Service**” means for the Bonds, the average over all calendar years of the annual debt service from the date of such Bonds to their maturity, including:

(1) the principal amount of all Outstanding Bonds payable in such calendar year either at maturity or pursuant to a sinking fund redemption; and

(2) the interest payable on the aggregate principal amount of the Bonds Outstanding in such calendar year assuming the Bonds are retired as scheduled.

“**Bond Counsel**” means an attorney or firm of attorneys, selected by the City, of nationally recognized standing in matters pertaining to the tax treatment of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of the State.

“**Bond Depository**” means a trust company or other financial institution which is registered as a “clearing agency” pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, or is otherwise qualified under applicable law to act as securities custodian for Bonds on behalf of the Participants and the beneficial owners of interests in such Bonds.

“**Bond Register**” means the books which the Fiscal Agent shall keep or cause to be kept pursuant to Section 3.06 hereof, on which the registration and transfer of the Bonds shall be recorded.

“**Bond Year**” means with respect to the Bonds the twelve-month period beginning on the day after expiration of the preceding Bond Year, provided the first Bond Year shall begin on the initial dated date of the Bonds and end on September 2, 2010.

“**Bondowner**” or “**Owner**” means the person or persons in whose name or names any Bond is registered as shown on the Bond Register.

“**Bonds**” means the City of Piedmont Hills Underground Assessment District Limited Obligation Improvement Bonds, Series 2009-A, issued to represent unpaid assessments.

“**Business Day**” means any day of the year other than a Saturday, Sunday, a day on which the New York Stock Exchange is closed or any day on which the Fiscal Agent is not open for business.

“**City**” means the City of Piedmont, California.

“**City Administrator**” means the City Administrator of the City.

“**Closing Date**” means the date of delivery of the Bonds by the City and payment therefor by the original purchaser thereof, being July __, 2009, for the Bonds.

“**Code**” means the Internal Revenue Code of 1986.

“**Continuing Disclosure Agreement**” means that certain Continuing Disclosure Agreement of the City dated the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“**Corporate Trust Office**” means the corporate trust office of the Fiscal Agent, provided that for purposes of redemption, payment, exchange, transfer, cancellation and surrender of Bonds, such term means the corporate trust office of the Fiscal Agent in Los Angeles, California, or such other office as designated by the Fiscal Agent.

“**Costs of Issuance**” means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, filing and recording fees, initial fees and charges of the Fiscal

Agent including its first annual administration fee, expenses incurred by the City in connection with the issuance of the Bonds and the establishment of the Assessment District, assessment engineer fees and expenses, Bond (underwriter's) discount, legal fees and charges, including bond counsel, financial consultant's fees, charges for execution, transportation and safekeeping of the Bonds and other costs, charges and fees in connection with the foregoing.

“**Costs of Issuance Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the Fiscal Agent.

“**Council**” means the City Council of the City.

“**County**” means the County of Alameda, California.

“**Director of Public Works**” means the Director of Public Works of the City.

“**Federal Securities**” means, subject to applicable law, United States Treasury notes, bonds, bills or certificates of indebtedness including United States Treasury Obligations - State and Local Government Series (“SLGS”) or other direct obligations issued by the United States Treasury for which the faith and credit of the United States are pledged for the payment of principal and interest; and obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or other federal agencies or United States Government-sponsored enterprises.

“**Final Engineer's Report**” means the amended engineer's report approved by the City Council on May 4, 2009, a copy of which is recorded in the office of the Director of Public Works.

“**Finance Director**” means the Finance Director of the City.

“**Fiscal Agent**” means Union Bank, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, at its Corporate Trust Office in San Francisco, California, and its successors or assigns, or any other bank or trust company which may at any time be substituted in its place as provided in Sections 8.02, 8.03 or 8.04 and any successor thereto.

“**Fiscal Year**” means the twelve-month period ending on June 30 of each year, or any other annual accounting period hereafter selected or designated by the City as its Fiscal Year in accordance with applicable law.

“**Improvement Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the Fiscal Agent.

“**Independent Financial Consultant**” means a financial consultant or firm of such consultants generally recognized to be well qualified in the financial consulting field, appointed and paid by the City and who, or each of whom:

- (1) is in fact independent and not under the domination of the City;
- (2) does not have any substantial interest, direct or indirect, with the City; and
- (3) is not connected with the City as a member, officer or employee of the City, but who may be regularly retained to make annual or other reports to the City.

“**Interest Payment Date**” means each March 2 and September 2, commencing March 2, 2010.

“**Maximum Annual Debt Service**” means the maximum sum obtained for any calendar year by totaling the following for such calendar year:

- (1) the principal amount of all Outstanding Bonds payable in such calendar year either at maturity or pursuant to a sinking fund redemption; and
- (2) the interest payable during such calendar year on all Outstanding Bonds, assuming that all Outstanding Bonds are retired as scheduled (except to the extent that such interest is to be paid from the proceeds of the sale of any of the Bonds).

“**Ordinance of Issuance**” means Ordinance No. ___ N.S., passed and adopted by the Council on _____, 2009, and which, among other things, approved the form of this Agreement providing for the form, execution and issuance of the Bonds, and approved the forms and authorized the execution of related documents with respect to the issuance, sale and delivery of the Bonds.

“**Outstanding Bonds**” or “**Outstanding**” means all Bonds theretofore issued by the City, except:

- (1) Bonds theretofore cancelled or surrendered for cancellation in accordance with Section 11.01 hereof;
- (2) Bonds selected for payment or redemption of which moneys shall have been theretofore deposited in trust (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in this Agreement; and
- (3) Bonds defeased pursuant to Sections 10.01(b) or (c) hereof.

“**Owners**” or “**Bondowners**” means the registered owners of the Bonds.

“**Permitted Investments**” means the following, subject to applicable law:

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself);

1. U.S. Export-Import Bank (Eximbank)
Direct obligations of fully guaranteed certificates of beneficial ownership
2. Farmers Home Administration (FHA)
Certificates of beneficial ownership
3. Federal Financing Bank
4. Federal Housing Administration Debentures (FHA)
5. General Services Administration
Participation certificates
6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
7. U.S. Maritime Administration
Guaranteed Title XI financing
8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. Government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds
9. Resolution Funding Corp. (REFCORP) interest strip obligations

C. Bonds, debentures, notes or other evidence of indebtedness issued guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System
Senior debt obligations
2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations
3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or “Sallie Mae”)
Senior Debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating by S&P of AAAM-G; AAAM; or AAM, including funds for which the Fiscal Agent or its affiliates provide investment advisory or other management services.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including those of Fiscal Agent or its affiliates.

G. Commercial paper rated, at the time of purchase, “Prime - 1” by Moody’s or “A-1” or better by S&P.

H. Bonds or notes issued by any state or municipality which are rated by Moody’s or S&P in one of the two highest rating categories assigned by such agencies.

I. Federal funds or banks acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody’s and “A-1” or “A” or better by S&P.

J. Any state administered pooled investment fund in which the issuer is statutorily permitted or required to invest; provided, that such investment is held in the name or to the credit of the Fiscal Agent.

K. Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended; provided that such shares are held in the name and to the credit of the Fiscal Agent.

“**Preliminary Expense Deposit and Reimbursement Agreement**” means the agreement by that same title, bearing an effective date of July 17, 2000, between the City and the various proponents of the Assessment District.

“**Project or Underground Project**” means the public works project for the underground of the existing overhead and ground-level utility facilities within the Assessment District, as more particularly described in the Final Engineer’s Report and the approved plans and specifications for the Underground Project.

“**Project Costs**” means the amounts necessary to finance the construction and installation of the Project and the incidental costs associated therewith, including Administrative Expenses until such time as the City begins collecting the Administrative Expense Requirement.

“**Purchaser**” means Stone & Youngberg LLC, as the original purchaser of the Bonds.

“**Rebate Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the Fiscal Agent.

“**Rebate Requirement**” has the meaning ascribed to it in the Tax Certificate.

“**Record Date**” means the fifteenth day of the month preceding each Interest Payment Date, whether or not such day is a Business Day.

“**Redemption Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the Fiscal Agent.

“**Representation Letter**” means the letter(s) from the City and the Fiscal Agent to, or other instrument or agreement among the City and the Fiscal Agent with, the then current Bond Depository for the Bonds in which the City and the Fiscal Agent, among other things, make certain representations to, and agreements with, such Bond Depository with respect to the Bonds, the purchase and payment thereof, and delivery of notices with respect thereto.

“**Reserve Fund**” means the fund by that name established pursuant to Section 5.01 and maintained by the Fiscal Agent.

“**Reserve Requirement**” means, as of any date of calculation, an amount equal to one half of Maximum Annual Debt Service, subject to adjustment as provided in this Agreement, as determined by the City and specified in writing from time to time to the Fiscal Agent.

“**Resolution of Intention**” means Resolution No. 42-05, adopted by the Council on May 2, 2005, stating the City’s intention to establish the Assessment District, to levy the Assessments, and to implement the Project.

“**Supplemental Fiscal Agent Agreement**” or “**Supplement**” means any supplemental agreement amending or supplementing this Agreement.

“**Tax Certificate**” means the Certificate delivered upon the issuance of the Bonds relating to Section 148 of the Code, or any functionally similar replacement Certificate.

“**Tax-Exempt**” means, with reference to a Permitted Investment, a Permitted Investment the interest earnings on which are excludable from gross income for federal income tax purposes pursuant to Section 103(a) of the Code, other than one described in Section 57(a)(5)(C) of the Code.

“**Treasurer**” means the Finance Director.

“**Unpaid Assessments**” means the Assessments remaining unpaid, as set forth in the Certificate Respecting Paid and Unpaid Assessments, approved by resolution of the Council adopted on _____, 2009.

“**Yield**” with respect to the Bonds, has the meaning ascribed to such term in the Tax Certificate.

Section 1.02. **Interpretation.**

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural, and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

Section 1.03. **Equality of Bonds; Pledge of Assessments; No Obligation to Cure Deficiency.** Pursuant to the Act and this Agreement, the Bonds secured by the Unpaid Assessments shall be equally payable from the Assessments without priority for number, issue date, date of sale, date of execution, or date of delivery, and the payment of the interest on and principal of the Bonds and any premiums upon the redemption thereof shall be exclusively paid from the Assessments and moneys on deposit in the Redemption Fund and the Reserve Fund which are hereby set aside for the payment of the Bonds. The Assessments and any interest earned on the funds established herein shall constitute a trust fund held for the benefit of the Owners of the Bonds to be applied to the payment of the interest on, premium, if any, and principal of the Bonds and so long as any of the Bonds remain Outstanding and shall not be used for any other purpose, except as permitted by the Act, this Agreement or any Supplemental Fiscal Agent Agreement.

Nothing in this Agreement or any Supplemental Fiscal Agent Agreement shall preclude the redemption prior to maturity of any Bonds subject to call and redemption and payment of said Bonds from proceeds of Bonds issued under Division 11.5 of the California Streets and Highways Code, or under any other law of the State.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

Section 2.01. **Unpaid Assessments.** The City has determined that the Assessments remaining unpaid are as shown on the Certificate re Paid and Unpaid Assessments, presented to the Council in the amount of \$ _____ together with the Supplemental Assessments in the amount of \$ _____, and the aggregate amount thereof is \$ _____. For a particular description of the parcels of land bearing the respective assessment numbers set forth in said Certificate re Paid and Unpaid Assessments and upon which Assessments remain unpaid, severally and respectively, reference is hereby made to the

Assessment Roll and to the assessment diagram contained in the Final Engineer's Report as recorded in the office of the Director of Public Works and on file in the office of the City Clerk.

Section 2.02. **Type and Nature of Bonds; Limited Liability**. Notwithstanding anything contained herein, in the Bonds, Sections 8800 and 8809 of the Act, any other provision of law, or in any of the resolutions adopted in connection with the proceedings for the Assessment District to the contrary, all Bonds authorized pursuant to this Agreement shall be a special and limited obligation of the City, and the City shall not under any circumstances (including, without limitation, after any installment of principal or interest of any Assessment levied on any lot or parcel in the Assessment District becomes delinquent or after the City acquires title to any such lot or parcel whether through foreclosure or otherwise) be obligated to pay principal, premium, if any, or interest on the Bonds (including replenishment of the Reserve Fund pursuant to Section 5.06 hereof) from any source whatsoever other than the Redemption Fund (including any transfers thereto from the Reserve Fund). Neither the City, the Council, the officers or employees of the City, any person or entity acting for or on behalf of the City in connection with the issuance of the Bonds or in connection with the formulation or operation of the Assessment District, nor any persons executing the Bonds, shall be liable personally on the Bonds or be subject to any personal liability for the Bonds or any personal liability or accountability whatsoever by reason of or in connection with the issuance of the Bonds or by reason of any act or acts or the failure or omission to take any act or acts (including, without limitation, a negligent act or omission) in connection with or related to the formulation or operation of the Assessment District.

AS PROVIDED BY SECTION 8769 OF THE ACT, THE COUNCIL HAS DETERMINED AND DECLARED IN THE RESOLUTION OF INTENTION THAT THE CITY WILL NOT OBLIGATE ITSELF TO ADVANCE AVAILABLE FUNDS FROM THE TREASURY OF THE CITY TO CURE ANY DEFICIENCY WHICH MAY OCCUR IN THE REDEMPTION FUND. THIS DETERMINATION, HOWEVER, SHALL NOT PREVENT THE CITY, IN ITS SOLE DISCRETION, FROM SO ADVANCING SUCH FUNDS.

Section 2.03. **Validity of Bonds**. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the City for the original financing or refinancing of the project, or by any contracts made by the City in connection therewith, and the recital contained in the Bonds that the same are issued pursuant to the Act shall be conclusive evidence of their validity and of the regularity of their issuance.

Section 2.04. **Authorization and Purpose of Bonds**. The Bonds shall be designated "City of Piedmont Hills Undergound Assessment District Limited Obligation Improvement Bonds, Series 2009-A," shall be in the aggregate principal amount of \$_____, and shall be issued by the City under and pursuant to the Act and under and pursuant hereto. The Bonds may contain or have endorsed thereon such other descriptive provisions, specifications and words not inconsistent with the provisions hereof as may be desirable or necessary to comply with custom or the rules of any securities exchange or commission or brokerage board or otherwise as may be determined by the City prior to the delivery thereof.

The purpose for which the Bonds are to be issued is to provide funds to pay a prescribed portion of the costs and expenses of implementing the Underground Project (including reimbursement of any funds advanced to or for the Assessment District), to fund the Reserve Fund for the Bonds, to fund capitalized interest, and to pay the costs of issuance for the Bonds, as more particularly described in the Final Engineer's Report approved by the Council on May 4, 2009, as later modified by act.

ARTICLE III

TERMS AND PROVISIONS OF BONDS

Section 3.01. Authorization of the Bonds. The City has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by the Act, and the City is now authorized, pursuant to each and every requirement of the Act and hereof, to issue the Bonds upon the security of the Unpaid Assessments in the form and manner provided herein, which Bonds shall be entitled to the benefit, protection and security of the provisions hereof.

Section 3.02. Terms of Bonds.

(a) The interest on and principal of and redemption premiums, if any, on the Bonds shall be payable in lawful money of the United States of America at the Corporate Trust Office of the Fiscal Agent.

(b) The Bonds shall be issued as fully registered Bonds in Authorized Denominations not exceeding the principal amount of the Bonds maturing at any one time.

(c) The Bonds shall be dated their date of delivery and shall mature on September 2 of the years, and in the respective principal amounts set forth opposite such years, and shall bear interest at the respective rates per annum, set forth in the following table:

<u>Maturity Date</u> <u>(September 2)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2010	\$	%
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		
2034		

(d) Each Bond shall bear interest from the Interest Payment Date next preceding its date of authentication and registration, unless (i) its date of authentication is an Interest Payment Date, in which event the Bond shall bear interest from its authentication date, (ii) its date of authentication is after a Record Date and is before the immediately succeeding Interest Payment Date, in which event the Bond shall bear interest from the Interest Payment Date immediately succeeding the date of its authentication or (iii) its date of authentication is before the close of business on the first Record Date, in which event the Bond shall bear interest from its dated date; provided, that if at the time of authentication of any Bond interest is then in default on the Outstanding Bonds, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment or if no interest has been paid or made available for payment from its dated date. Interest on each Bond shall be calculated on the basis of a 360-day year, consisting of twelve 30-day months.

Payment of interest on the Bonds due on or before the maturity or prior redemption thereof shall be made only to the person whose name appears in the Bond Register as the registered owner thereof at the close of business on a Record Date, such interest to be paid by check mailed by first class mail, postage prepaid, on the Interest Payment Date to such registered

owner at his address as it appears on such Bond Register, except that in the case of an Owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Bonds, upon written request of such Owner to the Fiscal Agent, in form satisfactory to the Fiscal Agent, received not later than the Record Date, such interest shall be paid on the Interest Payment Date in immediately available funds by wire transfer to an account in the United States. Payment of the principal of and redemption premiums, if any, on the Bonds shall be made only to the person whose name appears in the Bond Register required to be kept by the Fiscal Agent pursuant to Section 3.06 as the registered owner thereof, such principal and redemption premiums, if any, to be paid only on the surrender of the Bonds at the Corporate Trust Office of the Fiscal Agent at maturity or on redemption prior to maturity.

(e) The Bonds shall recite in substance that the interest on and principal of and redemption premiums, if any, on the Bonds are payable solely from the levy of the Assessments, and that the Bonds are limited obligations of the City and that the City will not obligate itself to advance available funds from its treasury to cure any deficiency in the Redemption Fund.

(f) From and after the issuance of the Bonds, the findings and determinations of the Council shall be conclusive evidence of the existence of the facts so found and determined in any action or proceeding in any court in which the validity of such Bonds is at issue, and no bona fide purchaser of any of such Bonds shall be required to independently establish the existence of any fact or the performance of any condition or the taking of any proceeding required prior to such issuance or the application of the purchase price paid for such Bonds. The recital contained in the Bonds that the Bonds are issued under and pursuant to the Act and under and pursuant hereto shall be conclusive evidence of their validity and of the regularity of their issuance and all Bonds shall be incontestable from and after their issuance. Bonds shall be deemed to be issued, within the meaning hereof, whenever the definitive Bonds (or any temporary Bonds exchangeable therefor) have been delivered to the purchaser thereof and the purchase price thereof received.

Section 3.03. Execution and Authentication. The Bonds shall be signed on behalf of the City by the manual or facsimile signatures of the Finance Director and the City Clerk, in their capacity as officers of the City, and the seal of the City (or a facsimile thereof) shall be impressed, imprinted, engraved or otherwise reproduced thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer before the Bonds so signed and sealed have been authenticated and delivered by the Fiscal Agent (including new Bonds delivered pursuant to the provisions hereof with reference to the transfer and exchange of Bonds or to lost, stolen, destroyed or mutilated Bonds), such Bonds shall nevertheless be valid and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office.

Only such Bonds as shall bear thereon such certificate of authentication in the form set forth in Exhibit B hereto shall be entitled to any right or benefit under this Agreement, and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been manually executed by the Fiscal Agent.

Section 3.04. **Registration, Exchange or Transfer**. The registration of any Bond may, in accordance with its terms, be transferred upon the Bond Register by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation at the Corporate Trust Office of the Fiscal Agent, accompanied by delivery of a written instrument of transfer in a form acceptable to the Fiscal Agent and duly executed by the Bondowner or his or her duly authorized attorney.

Bonds may be exchanged at the Corporate Trust Office of the Fiscal Agent for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity. The Fiscal Agent will not charge the Owner for any new Bond issued upon any exchange or transfer, but shall require the Owner requesting such exchange or transfer to pay any tax or other governmental charge required to be paid with respect to such exchange or transfer. Whenever any Bond or Bonds shall be surrendered for registration of transfer or exchange, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond or Bonds of the same maturity for a like aggregate principal amount; provided, that the Fiscal Agent shall not be required to register transfers or make exchanges of Bonds (i) during the fifteen (15) day period preceding the selection of Bonds for redemption, or (ii) selected for redemption.

Section 3.05. **Book-Entry Bonds**.

(a) The Bonds shall be initially issued and registered in definitive form in the name of “Cede & Co.,” as nominee of The Depository Trust Company, New York, New York, and shall be initially issued as one Bond for each of the maturities in the principal amounts provided in Section 3.02. The Depository Trust Company, New York, New York, is hereby appointed initial depository for the Bonds and registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of Cede & Co., as nominee of The Depository Trust Company, or its nominee, or to any substitute depository designated pursuant to clause (ii) of this Section (a “substitute depository”); provided, that any successor of Cede & Co., as nominee of The Depository Trust Company or substitute depository, shall be qualified under any applicable laws to provide the services proposed to be provided by it;

(ii) To any substitute depository not objected to by the Fiscal Agent, upon (1) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository, or (2) a determination by the City to substitute another depository for The Depository Trust Company (or its successor) because The Depository Trust Company or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided, that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of The Depository Trust Company or its successor (or substitute depository or its successor) from its functions as depository, or (2) a determination by the City to remove The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Fiscal Agent, together with a Written Request of the City to the Fiscal Agent, a new Bond for each maturity shall be executed and delivered in the aggregate principal amount of the Bonds then Outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Written Request of the City. In the case of any transfer pursuant to clause (iii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Fiscal Agent, together with a Written Request of the City to the Fiscal Agent, new Bonds shall be executed and delivered in such denominations numbered in the manner determined by the Fiscal Agent and registered in the names of such persons as are requested in such Written Request of the City, subject to the limitations of Section 3.02, and thereafter, Bonds shall be transferred pursuant to Section 3.04; provided, that the Fiscal Agent shall not be required to deliver such new Bonds on a date prior to sixty (60) days after receipt of such Written Request of the City.

(c) The City and the Fiscal Agent shall be entitled to treat the person in whose name any Bond is registered as the owner thereof for all purposes hereof and any applicable laws, notwithstanding any notice to the contrary received by the City or the Fiscal Agent; and neither the City nor the Fiscal Agent shall have any responsibility for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Bonds; and neither the City nor the Fiscal Agent shall have any responsibility or obligation, legal or otherwise, to The Depository Trust Company or its successor (or any substitute depository or its successor), except to the extent that The Depository Trust Company or its successor (or any substitute depository or its successor) is an Owner of any Bonds.

(d) So long as the Outstanding Bonds are registered in the name of Cede & Co. or its registered assigns, the City and the Fiscal Agent shall cooperate with Cede & Co., as sole Owner, or its registered assigns, in effecting payment of the interest on and principal of and redemption premiums, if any, on the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

Section 3.06. **Bond Register**. The Fiscal Agent will keep or cause to be kept, at its Corporate Trust Office sufficient books for the registration and transfer of the Bonds which shall at all times during regular business hours upon reasonable prior notice be open to inspection by the City, and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be transferred on said Bond Register, Bonds as herein provided.

The City and the Fiscal Agent may treat the Owner of any Bond whose name appears on the Bond Register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Owner as it appears in the Bond Register for any and all purposes. It shall be the duty of the Bondowner to give written notice to the Fiscal Agent of any change in the Owner's address so that the Bond Register may be revised accordingly.

Section 3.07. **Mutilated, Lost, Destroyed or Stolen Bonds**. If any Bond shall become mutilated, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a

new Bond of like tenor, date, maturity and principal amount in authorized denominations in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be handled in accordance with Section 11.01 of this Agreement. If any Bond shall be mutilated, lost, destroyed or stolen, evidence of such mutilation, loss, destruction or theft may be submitted to the Fiscal Agent and, if such evidence is satisfactory to the Fiscal Agent and, if indemnity satisfactory to the Fiscal Agent shall be given, the City, at the expense of the Bondowner, shall execute and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and maturity, numbered and dated as such Fiscal Agent shall determine in lieu of and in substitution for the Bond so mutilated, lost, destroyed or stolen. Any Bond issued in lieu of any Bond alleged to be mutilated, lost, destroyed or stolen, shall be equally and proportionately entitled to the benefits hereof with all other Bonds issued hereunder. The Fiscal Agent shall not treat both the original Bond and any replacement Bond as being Outstanding Bonds for the purpose of determining the principal amount of Bonds which may be executed, authenticated and delivered or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and replacement bond shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Bond to replace a Bond which has been mutilated, lost, destroyed or stolen, and which has matured, the Fiscal Agent may make payment with respect to such Bond upon receipt of indemnity satisfactory to the Fiscal Agent.

Section 3.08. **Form of the Bonds**. The definitive Bonds shall be printed, lithographed or typewritten and shall be in substantially the form as set forth in Exhibit B attached hereto, the terms of which are incorporated herein by this reference, with necessary or appropriate variations as may be approved by the City Administrator and Bond Counsel.

Section 3.09. **Temporary Bonds**. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds shall be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, shall be issued in fully registered form and shall contain such reference to any of the provisions hereof as may be appropriate. Each temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered in exchange therefor at the office of the Fiscal Agent, or such other place as designated by the Fiscal Agent, and the Fiscal Agent shall deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations of the same maturity date or dates, and until so exchanged, the temporary Bonds shall be entitled to the same benefits as definitive Bonds issued hereunder.

Section 3.10. **Application of Proceeds of the Sale of the Bonds**. On the Closing Date, the City will cause the Purchaser to pay to the Fiscal Agent the amount of \$_____, representing the purchase price of the Bonds, and the Fiscal Agent shall set aside and deposit said amount in the following funds and accounts, each established pursuant to Section 5.01 of this Agreement, in the following order:

- (1) The Fiscal Agent shall deposit into the Reserve Fund the amount of \$ _____ representing the Reserve Requirement as of the Closing Date;
- (2) The Fiscal Agent shall deposit into the Costs of Issuance Fund the sum of \$ _____ for payment of Costs of Issuance; and
- (3) The Fiscal Agent shall deposit in the Improvement Fund the remainder of the Bond proceeds in the amount of \$ _____.

ARTICLE IV

REDEMPTION OF BONDS

Section 4.01. **Privilege of Redemption of Bonds**. Any Bonds subject to redemption prior to maturity pursuant hereto shall be redeemable as provided in this article, and upon such other terms (in addition to and consistent with the terms contained in this article) as may be specified herein; provided that redemption of Bonds under subsections (a) and (b) of this Section 4.01 other than from the application of refunding bond proceeds shall be made only from and to the extent of funds on deposit with the Fiscal Agent and available for such purpose on the date such notice is given.

(a) **Optional Redemption**. The Bonds are subject to optional redemption by the City prior to maturity, as a whole or in part in Authorized Denominations on any Interest Payment Date, upon at least forty-five (45) days' written notice from the City to the Fiscal Agent and upon at least thirty (30) days' written notice to the Bondowner, from any moneys deposited in the Redemption Fund by the City from any source of funds legally available for such purpose at the redemption price equal to the principal amount thereof, together with a redemption premium equal to the following amounts on the following dates (expressed as a percentage of the principal amount redeemed) plus accrued interest thereon to the date of redemption (accrued interest to the redemption date is mailed separately):

<u>Redemption Dates</u>	<u>Redemption Premium</u>
Interest Payment Dates Through March 2, 20__	3%
September 2, 20__ and March 2, 20__	2%
September 2, 20__ and March 2, 20__	1%
September 2, 20__ and thereafter	

(b) **Mandatory Partial Redemption of Term Bonds**. The term bonds maturing on September 2, 20__ are subject to mandatory redemption on or after September 2, 20__, by lot, at a redemption price equal to the principal amount thereof to be redeemed (accrued interest to the redemption date is mailed separately), without premium, solely from amounts deposited in the Redemption Fund pursuant to the Fiscal Agent Agreement, as follows:

Redemption Date (September 2)	Redemption Amount
20__	
20__	
20__	
20__	
20__	
20__	
20__ (maturity)	

In the event that the term bonds subject to mandatory redemption pursuant to this Section are redeemed in part prior to their stated maturity date from any moneys other than the mandatory sinking account payments, the remaining mandatory sinking account payments for such term bonds shall be reduced proportionately in each year remaining until and including the final maturity date of such term bonds.

Section 4.02. **Selection of Bonds for Redemption**. If less than all of the Outstanding Bonds are to be redeemed, the City shall designate in a written direction to the Fiscal Agent the aggregate amount of Bonds of each maturity to be redeemed, and the Fiscal Agent shall select the Bonds of each maturity to be redeemed by lot. To the extent that the moneys being utilized for such redemption are derived from prepayments of Assessments by property owners, the City shall determine the aggregate amount of Bonds of each maturity to be redeemed on a pro-rata basis in accordance with the provisions of Section 8768 of the Act, unless otherwise designated in writing. The Fiscal Agent shall promptly notify the City in writing of the numbers of the Bonds, or portions thereof, selected for redemption.

In lieu, or partially in lieu, of such call and redemption, moneys deposited in the Prepayment Account of the Redemption Fund may be used by the Fiscal Agent as directed in writing by the City to purchase Outstanding Bonds in the manner hereinafter provided. Purchases of Outstanding Bonds may be made by the City prior to the selection of Bonds for redemption by the Fiscal Agent, at public or private sale as and when and at such prices as the City may in its discretion determine, but only at prices (including brokerage or other expenses) of not more than par plus accrued interest, and any accrued interest payable upon the purchase of Bonds may be paid from the amount in the Redemption Fund for payment of interest on the next following Interest Payment Date.

Section 4.03. **Notice of Redemption**. When Bonds are to be called for redemption under Section 4.01 and the Fiscal Agent has received the required notice from the City, the Fiscal Agent shall give notice, in the name of the City, of the redemption of such Bonds. Such notice of redemption shall (i) specify the serial numbers and the maturity date or dates of the Bonds selected for redemption, except that where all the Bonds are subject to redemption, or all the Bonds of one maturity, are to be redeemed, the serial numbers thereof need not be specified; (ii) state the date fixed for redemption and for surrender of the Bonds to be redeemed; (iii) state the redemption price; (iv) state the place or places where the Bonds are to be surrendered for redemption; and (v) in the case of Bonds to be redeemed only in part, state the portion of such Bonds which is to be redeemed. Such notice shall further state that on the date

fixed for redemption, there shall become due and payable on each Bond or portion thereof called for redemption, the principal thereof, together with any premium, and interest accrued to the redemption date, and that from and after such date, interest thereon shall cease to accrue and be payable. At least thirty (30) days but no more than forty-five (45) days prior to the redemption date, the Fiscal Agent shall mail a copy of such notice, by first class mail, postage prepaid, to the respective Owners thereof at their addresses appearing on the Bond Register. The actual receipt by the Owner of any Bond of notice of such redemption shall not be a condition precedent thereto, and failure to receive such notice shall not affect the validity of the proceedings for the redemption of such Bonds, or the cessation of interest on the redemption date. A certificate by the Fiscal Agent that notice of such redemption has been given as herein provided shall be conclusive as against all parties.

The Fiscal Agent shall take the following additional actions with respect to such notice of redemption provided that neither the failure to take such actions nor any defect in the action taken shall affect the validity of the proceedings for such redemption:

(a) On the date on which the notice of redemption is mailed to the Owners of the Bonds pursuant to the provisions above, such notice of redemption shall be given by (i) first-class mail, postage prepaid, (ii) confirmed facsimile transmission, or (iii) overnight delivery service, to:

The Depository Trust Company
711 Stewart Avenue
Garden City, New York 11530
Facsimile transmission: (516) 227-4164
(516) 227-4190
Phone: (516) 227-4000

(b) On the date on which the notice of redemption is mailed to the Owners of the Bonds pursuant to the provisions above, such notice of redemption shall be given to each of the following services by (i) first-class mail, postage prepaid, or (ii) overnight delivery service, or (iii) in any other manner acceptable to the following services:

(1) Electronic Municipal Market Access (EMMA)
<https://www.msrb.org.msrb1/control/registration/cod/landing.asp>

Section 4.04. **Partial Redemption of Bonds**. Upon surrender of any Bond to be redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the Owner, at the expense of the City, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the same interest rate and the same maturity.

Section 4.05. **Effect of Notice and Availability of Redemption Money**. Notice of redemption having been duly given, as provided in Section 4.03, and the amount necessary for the redemption having been made available for that purpose and being available therefor on the date fixed for such redemption:

(a) the Bonds, or portions thereof, designated for redemption shall, on the date fixed for redemption, become due and payable at the redemption price thereof as provided in this Agreement, anything in this Agreement or in the Bonds to the contrary notwithstanding;

(b) upon presentation and surrender thereof at the Corporate Trust Office of the Fiscal Agent, the redemption price of such Bonds shall be paid to the Owner thereof;

(c) from and after the redemption date the Bonds or portions thereof so designated for redemption shall be deemed to be no longer outstanding and such Bonds or portions thereof shall cease to bear further interest; and

(d) from and after the date fixed for redemption no Owner of any of the Bonds or portions thereof so designated for redemption shall be entitled to any of the benefits of this Agreement, or to any other rights, except with respect to payment of the redemption price and interest accrued to the redemption date from the amounts so made available.

ARTICLE V

CREATION OF FUNDS AND ACCOUNTS APPLICATION OF PROCEEDS AND ASSESSMENTS

Section 5.01. **Funds and Accounts**. In connection with the Bonds issued hereunder, there are hereby created and established the following funds and accounts. The City agrees and covenants to maintain, so long as any Bonds are Outstanding, the Piedmont Hills Underground Assessment District Administrative Expense Fund (the “**Administrative Expense Fund**”) and the Piedmont Hills Underground Assessment District Assessment Fund (the “**Assessment Fund**”).

The Fiscal Agent agrees and covenants to create, establish and maintain, so long as any Bonds are Outstanding, the following funds and accounts:

(1) The Piedmont Hills Underground Assessment District Improvement Fund (the “**Improvement Fund**”);

(2) The Piedmont Hills Underground Assessment District Costs of Issuance Fund (the “**Costs of Issuance Fund**”);

(3) The Piedmont Hills Underground Assessment District Redemption Fund (the “**Redemption Fund**”), within which there shall be established and created a Principal Account, an Interest Account, and a Prepayment Account;

(4) The Piedmont Hills Underground Assessment District Reserve Fund (the “**Reserve Fund**”); and

(5) The Piedmont Hills Underground Assessment District Rebate Fund (the “**Rebate Fund**”).

All moneys in said funds and accounts shall be held by the City or Fiscal Agent and shall be accounted for separately and apart from all other accounts, funds, moneys or other resources and shall be allocated, applied and disbursed solely to the uses and purposes set forth in this Article.

Section 5.02. **Improvement Fund**. After first depositing the prescribed portion of the proceeds of the sale of the Bonds in the Costs of Issuance Fund , the Redemption Fund, and the Reserve Fund as provided by Section 3.10 hereof, the remaining proceeds of the sale of the Bonds shall be deposited in the Improvement Fund as set forth in Section 3.10 hereof. In addition, all amounts held by the City on the Closing Date with respect to the Assessment District or the Project and all amounts thereafter received from time to time by the City with respect to the Assessment District or the Project shall be transferred forthwith upon receipt (and not later than the Closing Date as to amounts held by the City on the Closing Date) to the Fiscal Agent for deposit in the Improvement Fund. Amounts to pay for the costs of the construction and installation of the Project shall be paid from the Improvement Fund, upon receipt by the Fiscal Agent of written directions from the Director of Public Works in the form of Exhibit C stating that (1) the conditions to the release of such funds have been satisfied, (2) the name of the account from which payment is to be made, (3) the name of the party to whom payment is due, (4) the amount to be paid, (5) the purpose for which the obligation to be paid was incurred, (6) there has not been filed with or served upon the City notice of any lien, right to lien or attachment upon, stop notice or claim affecting the right to receive payment of, any of the moneys payable to any of the parties named in such certificate or written requisition, which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by mere operation of law.

If, after completion of the Project and the payment of all claims from the Improvement Fund (notice of which shall be given to the Fiscal Agent by the Finance Director), including but not limited to reimbursement of amounts, if any, owed by the City to the Proponents pursuant to and as provided by the Preliminary Expense Deposit and Reimbursement Agreement, the City determines that a surplus remains in the Improvement Fund and the accounts therein, the Fiscal Agent shall be directed in writing by the Council to distribute any such surplus pursuant to Section 10427.1 of the 1913 Act, as provided by the Resolution of Intention.

Section 5.03. **Assessment Fund**. As soon as practicable following each date on which the City receives money from the County constituting the City's apportionment of tax revenues (any such apportionment being hereinafter referred to as an "Apportionment"), which shall be on or about January 1 and May 1 of each year (including Assessment Installments and moneys collected representing the Administrative Expense Requirement), the City shall deposit a portion of such Apportionment in the Administrative Expense Fund, as provided by Section 5.04 hereof, and shall deposit the remainder of such Apportionment and any other amounts constituting Assessment Installments (exclusive of amounts representing the Administrative Expense Requirement) in the Assessment Fund. On or prior to the first day of February and August of each year, the City shall transfer to the Fiscal Agent for deposit into the Redemption Fund, moneys on deposit in the Assessment Fund in the amounts and in the following order of priority:

(1) an amount sufficient to make the Interest Payment on the next succeeding Interest Payment Date for the Bonds; and

(2) with respect to February 1 of each year, an amount up to one-half of the principal payment due on the Bonds on the following September 2 to the Principal Account, and with respect to August 1 of each year, an amount which, when combined with amounts on deposit in the Principal Account shall equal the principal payment due on the Bonds on the following September 2.

On August 5 of each Bond Year or as soon thereafter as practicable, any moneys remaining in the Assessment Fund after the deposits described above for such Bond Year have been funded shall either (i) if there are sufficient moneys to redeem Bonds, be transferred by the City to the Fiscal Agent for deposit to the Prepayment Account of the Redemption Fund and used to redeem Bonds as provided herein or (ii) be retained in the Assessment Fund and utilized by the City to provide for a credit against the Assessment Installment otherwise billable on account of each Unpaid Assessment, said credits to be determined for each Unpaid Assessment in the same proportion as such Unpaid Assessment bears to the total amount of all Unpaid Assessments.

If the amount of the Apportionment received from the County is less than the amount of the Assessment Installments levied, the City shall determine the amount of the delinquency and shall provide the Fiscal Agent with a calculation setting forth the amounts for purposes of drawing upon the Reserve Fund as provided in Section 5.06(b), including the respective amounts of such draws. In the event there is a delinquency in the payment of any Assessment Installment, the City shall notify the Fiscal Agent for the purpose of determining the method of withdrawal from the Reserve Fund pursuant to Section 5.06(b) hereof.

Upon provision for payment or redemption of all Bonds and after payment of any amounts due to the Fiscal Agent, all moneys remaining in the Assessment Fund shall be retained by the City.

Section 5.04. Administrative Expense Fund. Upon receipt of an Apportionment, the City shall transfer the amounts designated as the Administrative Expense Requirement to the Administrative Expense Fund. The City shall apply the moneys on deposit in the Administrative Expense Fund for payment of Administrative Expenses.

Fees or charges incurred by the City in performance of its obligations hereunder shall be paid from the Administrative Expense Fund, including the fees or charges payable to the City for the City's collection services described herein, and amounts retained by the County shall not be transferred to the City or the Fiscal Agent or considered part of the Apportionment. Such fees or charges shall be reimbursed or satisfied by the collection of such fees or charges or estimates thereof with the principal of and interest on the Assessment Installments due at the time of such collection. The amount of any such fees, charges or estimates thereof shall be apportioned pro rata and shall be collected with the same collection and enforcement procedures and with the same priority and effect as with respect to the collection of the principal of and interest on the Assessments.

Section 5.05. Redemption Fund. The principal of and interest on the Bonds until maturity shall be paid by the Fiscal Agent from the Redemption Fund. At the maturity of the Bonds, and after all principal and interest then due on any Outstanding Bonds has been paid or provided for, moneys in the Redemption Fund shall be transferred to the City for deposit to the Assessment Fund.

For the purpose of assuring that payment of principal and interest on the Bonds will be made when due, the Fiscal Agent shall transfer amounts received from the Assessment Fund pursuant to Section 5.03 to be used in the following priority:

(a) An amount such that the balance in the Interest Account one (1) day prior to each Interest Payment Date shall be equal to the installment of interest due on the Bonds on said Interest Payment Date. Moneys in the Interest Account shall be used for the payment of interest on the Bonds as the same becomes due.

(b) With respect to March 1 of each year, an amount up to one-half of the principal payment due on the Bonds on the following September 2 to the Principal Account, and with respect to September 1 of each year, or the preceding Business Day if September 1 is not a Business Day, an amount which, when combined with amounts on deposit in the Principal Account shall equal the principal payment due on the Bonds on the following September 2. Moneys in the Principal Account shall be used for the payment of the principal of such Bonds as the same become due at maturity.

(c) Any amounts remaining in the Redemption Fund on September 15 of each year, after all principal and interest payments due on the prior September 2, shall be transferred to the City for deposit in the Assessment Fund.

Prepayment Account. Moneys set aside in the Prepayment Account of the Redemption Fund shall be used solely for the purpose of redeeming Bonds (or purchasing Bonds in lieu of redemption) and shall be applied on or after the redemption date to the payment of principal of and premium on the Bonds to be redeemed upon presentation and surrender of such Bonds.

Upon receiving any prepayment of an Assessment, the Finance Director shall transfer such prepayment to the Fiscal Agent for deposit in the Prepayment Account with written instructions for deposit therein. At least three (3) Business Days before each Interest Payment Date, the Fiscal Agent shall withdraw from the Prepayment Account and transfer to the applicable accounts within the Redemption Fund, the installment of principal due and interest accrued relating to such prepayment to the applicable Interest Payment Date as directed in writing by the City. Any surplus remaining in the Prepayment Account shall be used by the City to advance the maturity of the Bonds as provided in Part 11.1 of the Act as directed in writing by the City.

If, after provision has been made for all of the Bonds to be redeemed or paid, there are moneys remaining in any account of the Redemption Fund after payment of all fees and reimbursable expenses due to the Fiscal Agent, said moneys shall be transferred to the City for deposit to the Assessment Fund, provided, that if said moneys are part of the proceeds of Bonds

said moneys shall be transferred to the fund or account created for the payment of principal of and interest on such Bonds.

Section 5.06. Reserve Fund.

(a) There shall be created and established a Reserve Fund for the Bonds. Subject to Section 2.02, the amount representing the Reserve Requirement shall be maintained in the Reserve Fund at all times.

(b) Except as provided in the subsections (c) through (f) below, moneys in the Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds when due in the event that the moneys in the Redemption Fund are insufficient therefor, and for deposit to the Rebate Fund as required. Based upon the calculation provided to the Fiscal Agent by the City pursuant to Section 5.03, the Fiscal Agent shall withdraw funds from the Reserve Fund as necessary for deposit in the Redemption Fund on or before the first day of March and September of each year.

(c) In the event Assessments are prepaid, in whole or in part, the Assessment thus prepaid shall be reduced by an amount equal to the ratio of the total amount of cash initially provided for the Reserve Fund to the total amount originally assessed in the proceedings for the issuance of the Bonds, multiplied by the total amount of the Assessment to be prepaid, and the amount thus determined shall be transferred from the Reserve Fund to the Prepayment Account of the Redemption Fund. The City shall notify, or shall cause the Fiscal Agent to be notified, of such amounts to be transferred.

(d) In the event that moneys in (i) the Reserve Fund, (ii) the Redemption Fund, and (iii) the Assessment Fund are sufficient to retire all of the Outstanding Bonds plus accrued interest thereon, the moneys in the Reserve Fund shall, at the written direction of the City, be transferred to the Redemption Fund and the City shall transfer amounts in the Assessment Fund to the Fiscal Agent for deposit to the Redemption Fund; and collection of the remaining Assessment Installments shall cease.

(e) All amounts remaining in the Reserve Fund in the year in which the last Assessment Installments become due and payable shall be credited toward said Assessments as follows: On or prior to July 1st of the Fiscal Year next preceding the Fiscal Year in which the last unpaid Assessment Installment becomes due and payable, the City shall determine the amount remaining in the Reserve Fund, and shall declare such amount to be surplus and order the same to be credited in the manner set forth in Section 10427.1 of the 1913 Act and shall provide written direction to the Fiscal Agent with respect thereto; provided that if all or any part of such Assessment Installments remain unpaid and are payable in installments, the amount apportioned to each parcel shall be credited against the last of such unpaid Assessment Installments and, if the amount apportioned to each parcel exceeds the amount of said last installment, then such excess shall be credited against the next to last of such Assessment Installments.

(f) Notwithstanding any provisions herein to the contrary, earnings on amounts deposited in the Reserve Fund shall be retained in the Reserve Fund; provided, that if

the amount of money in the Reserve Fund is in excess of the Reserve Requirement, the Fiscal Agent shall withdraw the amount of such excess from the Reserve Fund each July 1, and shall transfer such amount to the Redemption Fund to be used as provided in Section 5.05.

Section 5.07. Costs of Issuance Fund.

(a) A portion of the proceeds of the Bonds shall be deposited into the Costs of Issuance Fund and shall be applied to pay Costs of Issuance. Amounts to pay Costs of Issuance shall be paid from the Costs of Issuance Fund, upon receipt by the Fiscal Agent of written direction from the Finance Director, substantially in the form attached hereto as Exhibit A, stating (1) the name of the person to whom payment is due, (2) the amount to be paid, and (3) the purpose for which the obligation to be paid was incurred.

(b) Any amount remaining in the Costs of Issuance Fund on December 1, 2009 shall be transferred to the City for deposit in the Administrative Expense Fund and the account will be closed.

Section 5.08. Rebate Fund.

(a) Unless the Fiscal Agent shall receive an opinion of Bond Counsel not later than the Closing Date that the Bonds are not subject to the provisions of the Code respecting arbitrage rebate (in which case the Fiscal Agent shall not establish a Rebate Fund, and the provisions of this Section 5.08 shall have no application to the Bonds), the Fiscal Agent shall establish and maintain a fund separate from any other fund established and maintained hereunder designated as the Rebate Fund. All moneys at any time deposited in the Rebate Fund shall be held by the Fiscal Agent, to the extent required, in the judgment of the City, to satisfy the Rebate Requirement for payment to the federal government of the United States of America. Neither the City nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate. The Fiscal Agent shall be deemed to have complied with such provisions if it follows the written directions of the City and shall have no liability or responsibility to enforce compliance by the City with the terms of the Tax Certificate.

(b) The Fiscal Agent shall have no obligation to rebate any amounts required to be rebated pursuant to this Section, other than from moneys held in the funds and accounts created under this Agreement or from other moneys provided to it by the City. The Fiscal Agent shall have no responsibility to review the Tax Certificate, to determine the Rebate Requirement or to take any other action, other than to the extent specifically so directed by the City.

(c) The Fiscal Agent shall invest all amounts held in the Rebate Fund at the written direction of the City in Federal Securities. The City shall make such directions consistent with the restrictions set forth in the Tax Certificate. The Fiscal Agent shall retain all earnings on investments held in the Rebate Fund. Money shall not be transferred from the Rebate Fund except as provided in the Tax Certificate.

(d) Notwithstanding any other provision of this Agreement, including in particular Article VII hereof, the obligation of the City to remit the Rebate Requirement to the

United States and to comply with all other requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full of the Bonds.

Section 5.09. **Investments.** Moneys held in any of the funds and accounts under this Agreement shall be invested at the written direction of the Finance Director only in Permitted Investments which shall be deemed at all times to be a part of such funds and accounts. The Fiscal Agent shall provide the City with monthly statements of the principal balances and investment earnings thereon in each fund and account maintained by the Fiscal Agent under this Agreement.

Permitted Investments may be purchased at such prices as may be directed by the Finance Director in written directions delivered to the Fiscal Agent. All Permitted Investments shall be acquired subject to the limitations set forth in Section 6.02(d), the limitations as to maturities hereinafter in this Section set forth and such additional limitations or requirements consistent with the foregoing as may be established by the Finance Director. In the absence of instructions, the Fiscal Agent shall invest only in investments described in clause (D) of the definition of the term “Permitted Investments” in this Agreement.

The Fiscal Agent shall be entitled to rely conclusively upon the written instructions of the City directing investments in Permitted Investments as to the fact that each such investment is permitted by the laws of the State, and shall not be required to make further investigation with respect thereto. With respect to any restrictions set forth in the definition of Permitted Investments which embody legal conclusions (e.g., the existence, validity and perfection of security interests in collateral), the Fiscal Agent shall be entitled to rely conclusively on an opinion of counsel or upon a representation of the provider of such Permitted Investment obtained at the City’s expense.

Except as specifically provided in this Agreement, the Fiscal Agent shall not be liable to pay interest on any moneys received by it, but shall be liable only to account to the City for earnings derived from funds that have been invested.

The Fiscal Agent or any of its affiliates, either as principal or as agent, may engage in or be interested in any financial or other transaction with the City.

The Fiscal Agent and its officers and employees may acquire and hold Bonds with the same effect as if it were not the Fiscal Agent.

All moneys held by the Fiscal Agent shall be held as agent, but need not be segregated from other funds unless specifically required by this Agreement. For investment purposes only, the Fiscal Agent may commingle the funds and accounts established hereunder, but shall account for each separately.

Moneys in all funds and accounts except for the Reserve Fund shall be invested in Permitted Investments maturing, or with respect to which payments of principal and interest are scheduled or otherwise payable, not later than the date on which the City estimates that such moneys will be required by the Fiscal Agent for the purposes specified in this Agreement. Moneys in the Reserve Fund shall be invested in Permitted Investments, 50% of which must

mature within six (6) months and 50% of which must mature within one (1) year; however, if such investments may be redeemed without premium or penalty on the Business Day prior to each Interest Payment Date, 100% of the amount of the Reserve Fund may be invested in such redeemable investments of any maturity.

Subject to Sections 5.05 and 5.06 hereof, all earnings received from the investment of moneys in any fund or account established pursuant to this Agreement (with the exception of the Improvement Fund, the Costs of Issuance Fund, Administrative Expense Fund, the Assessment Fund and the Rebate Fund) shall, upon receipt by the Fiscal Agent, be deposited to the Redemption Fund. All earnings from the investment of money in the Improvement Fund, the Costs of Issuance Fund, the Administrative Expense Fund and the Assessment Fund shall be retained in such fund. All earnings from the investment of money in the Rebate Fund shall be retained in the Rebate Fund and applied in accordance with Section 5.08 hereof.

Notwithstanding anything to the contrary contained in this Section, an amount of interest received with respect to any Permitted Investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such Permitted Investment shall be credited to the fund or account for the credit of which such Permitted Investment was acquired.

For the purpose of determining the amount in any fund or account, all Permitted Investments credited to such fund or account shall be valued at the adjusted book value (plus, prior to the first payment of interest following acquisition, the amount of any accrued interest paid as part of the purchase price).

The Fiscal Agent or any of its affiliates may act as principal or agent in the making or disposing of any investment and it shall be entitled to its customary fee therefor. The Fiscal Agent may sell, or present for redemption, any Permitted Investment so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such Permitted Investment is credited. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made at the direction of the City or otherwise made in accordance with this Agreement.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Fiscal Agent will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Fiscal Agent hereunder.

ARTICLE VI

COVENANTS AND WARRANTY

Section 6.01. **Warranty**. The City shall preserve and protect the security of the Bonds and the rights of the Owners against all claims and demands of all persons.

Section 6.02. Covenants. So long as any of the Bonds are Outstanding and unpaid, the City makes the following covenants with the Owners under the provisions of the 1913 Act, the Act and this Agreement (to be performed by the City or its proper officers, agents or employees), which covenants are necessary, convenient and desirable to secure the Bonds and tend to make them more marketable; provided, however, that said covenants do not require the City to expend any funds or moneys other than the Assessments:

(a) Punctual Payment; Covenant Against Encumbrances. The City covenants that it will receive all Assessment Installments in trust and will, consistent with Section 5.03 hereof, deposit the Assessment Installments in the Assessment Fund and the City shall have no beneficial right or interest in the amounts so deposited except as provided by this Agreement. All such Assessment Installments, whether received by the City in trust or deposited with the Fiscal Agent, all as herein provided, shall nevertheless be disbursed, allocated and applied solely to the uses and purposes herein set forth, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the City.

The City covenants that it will duly and punctually pay or cause to be paid the principal of and interest on every Bond issued hereunder, together with the premium, if any, thereon on the date, at the place and in the manner set forth in the Bonds and in accordance with this Agreement to the extent Assessments and interest earnings transferred to the Redemption Fund are available therefor, and that the payments into the Redemption Fund and the Reserve Fund will be made, all in strict conformity with the terms of the Bonds and this Agreement, and that it will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement and all Supplements and of the Bonds issued hereunder. If at any time the total balance in the Redemption Fund, the Assessment Fund, and the Reserve Fund is sufficient to redeem all Outstanding Bonds pursuant to Section 4.01 hereof, the Finance Director may direct the Fiscal Agent to effect such redemption on the earliest date on which all outstanding Bonds may be redeemed.

The City will not mortgage or otherwise encumber, pledge or place any charge upon any of the Assessment Installments, and will not issue any obligation or security superior to the Bonds, payable in whole or in part from the Assessments.

(b) Commence Foreclosure Proceedings. The City covenants for the benefit of the Owners of the Bonds that it will determine or cause to be determined, no later than September 1 of each year, whether or not any owners of property within the Assessment District are delinquent in the payment of an installment on account of an Unpaid Assessment and, if such delinquencies exist, the City will order and cause to be commenced no later than November 1 of that same year and thereafter diligently prosecute or cause to be prosecuted, an action in the superior court to foreclose the lien of any Assessments or installment thereof not paid when due, provided, however, that the City shall not be required to order the commencement of foreclosure proceedings if (i) the total Assessment delinquency in the Assessment District for such Fiscal Year is less than five percent (5%) of the total amount of installments billed in such Fiscal Year on account of Unpaid Assessments, and (ii) the Reserve Fund remains at the Reserve Requirement. Notwithstanding the foregoing, if the City determines that any single property owner in the Assessment District is delinquent in excess of five thousand dollars (\$5,000) in the

payment of installments on account of Unpaid Assessments, then it will diligently institute, prosecute and pursue foreclosure proceedings against all parcels then owned by such property owner which are delinquent. Not later than thirty days prior to the applicable November 1 deadline for institution of foreclosure proceedings, the Finance Director shall notify the Council and the City Attorney of any delinquency requiring the commencement of a foreclosure action pursuant hereto, and the City shall commence, or cause to be commenced, such proceedings. The City may, but shall not be obligated to, advance funds from any source of legally available funds in order to maintain the Reserve Fund at the Reserve Requirement. Anything in this Agreement to the contrary notwithstanding, the City may employ a fiscal agent or attorney to undertake and perform its obligations under this subsection (b).

(c) Books and Accounts. The City will cause the Fiscal Agent to keep proper books or records and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions made by the Fiscal Agent hereunder. Such books of record and accounts shall at all times during business hours be subject to the inspection, upon reasonable notice, of the City or of the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding or their representatives authorized in writing.

(d) Tax Covenants. The City will comply with all provisions of the Tax Certificate. The City will not directly or indirectly use, or permit the use of, the proceeds of the Bonds or any other funds of the City or of the improvements acquired with the proceeds of the Bonds or any part thereof, or take or omit to take any action, which would cause the Bonds to be “arbitrage bonds” subject to federal income taxation by reason of Section 148 of the Code, “private activity bonds” subject to federal income taxation by reason of Section 141(a) of the Code, or obligations subject to federal income taxation because they are “federally guaranteed” as provided in Section 149(b) of the Code; and to that end the City, with respect to the proceeds of the Bonds and such other funds, will comply with all requirements of such sections of the Code and all regulations of the United States Department of the Treasury to the extent that such requirements are, at that time, applicable and in effect, and will comply with the provisions of the Tax Certificate.

In furtherance of the covenants of the City set forth above, and unless the Bonds are determined not to be subject to the provisions of the Code pertaining to arbitrage rebate, the City hereby agrees and covenants to cause the Fiscal Agent to establish and maintain the Rebate Fund, for the purpose of segregating the Rebate Requirement (as that term is defined in the Tax Certificate) from all other moneys of the City and the Fiscal Agent in accordance with the Tax Certificate.

(i) Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or defeasance of the Bonds. The City specifically covenants to pay or cause to be paid to the United States, at the times described in the Tax Certificate, the amounts required to be so paid by the Tax Certificate. The Fiscal

Agent shall comply with the instructions of the City given in accordance with the Tax Certificate.

(ii) Notwithstanding any provision of this Fiscal Agent Agreement, if the City shall provide to the Fiscal Agent an opinion of Bond Counsel that any specified action required under this Fiscal Agent Agreement is no longer required or that some further or different action is required to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds, the Fiscal Agent may conclusively rely on such opinion in complying with the requirements of the Fiscal Agent Agreement, and the covenants hereunder shall be deemed to be modified to the extent notwithstanding the provisions of Article VI hereof.

(e) Collection of the Assessment Installments. The City covenants that, commencing in the 2009-10 Fiscal Year, and not later than the deadline prescribed by the Alameda County Auditor, it will annually provide the Alameda County Auditor with the information required, in the format specified by the Alameda County Auditor, to post the Assessment Installments on account of each Unpaid Assessment on the property tax roll of Alameda County, said annual installments to include principal and interest on account of each Unpaid Assessment, together with the appropriate amount allocable to each Unpaid Assessment on account of the Administrative Expense Requirement. Collection of the Unpaid Assessments shall cease in the event sufficient moneys are available to redeem Bonds as provided in Section 5.05.

(f) Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Fiscal Agent Agreement, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; provided, however, that the Fiscal Agent, at the written direction of the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall (but only to the extent indemnified to its satisfaction from any liability or expense, including the reasonable fees and expenses of its attorneys and additional fees and expenses of the Fiscal Agent) or any Bondowner or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, "Beneficial Owner" means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

(g) Interpretation. Nothing in this Section shall be construed to permit the modification of the rights or obligations of the Fiscal Agent without its prior consent.

ARTICLE VII

AMENDMENTS TO AGREEMENT

Section 7.01. **Amendments Not Requiring Bondowner Consent**. The City may from time to time, and at any time, without notice to or consent of any of the Bondowners, adopt Supplements hereto for any of the following purposes:

(a) to cure any ambiguity, to correct or supplement any provisions herein which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement or in any resolution or order of the City relating to this Agreement, provided that such action shall not materially adversely affect the interests of the Bondowners;

(b) to add to the covenants and agreements of, and the limitations and the restrictions upon, the City contained in this Agreement, other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this Agreement as theretofore in effect;

(c) to modify, amend or supplement this Agreement in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not, materially adversely affect the interests of the Bondowners; or

(d) to modify, alter, amend or supplement this Agreement in any other respect which is not materially adverse to the Bondowners.

Nothing in this Section shall be construed to permit the modification of the rights or obligations of the Fiscal Agent without its prior consent.

Section 7.02. **Amendments Requiring Bondowner Consent**. Exclusive of the Supplements described in Section 7.01, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right to consent to and approve such Supplements as shall be deemed necessary or desirable by the City for the purpose of waiving, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Agreement; provided, however, that nothing herein shall permit, or be construed as permitting, (a) an extension of the maturity date of the principal, or the payment date of interest on, any Bond, (b) a reduction in the principal amount of, or redemption premium on, any Bond or the rate of interest thereon, (c) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (d) a reduction in the aggregate principal amount of the Bonds the Owners of which are required to consent to such Supplement, without the consent of the Owners of all Bonds then Outstanding.

If at any time the City shall desire to enter into a Supplement, which pursuant to the terms of this Section shall require the consent of the Bondowners, the City shall so notify the Fiscal Agent and shall deliver to the Fiscal Agent a copy of the proposed Supplement. The Fiscal Agent shall, at the expense of the City, cause notice of the proposed Supplement to be mailed, by first class mail postage prepaid, to all Bondowners at their addresses as they appear in the Bond Register. Such notice shall briefly set forth the nature of the proposed Supplement and shall state that a copy thereof is on file at the office of the Director of Public Works for

inspection by all Bondowners. The failure of any Bondowners to receive such notice shall not affect the validity of such Supplement when consented to and approved by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding as required by this Section. Whenever at any time within one year after the date of the first mailing of such notice the Fiscal Agent shall receive an instrument or instruments purporting to be executed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplement described in such notice, and shall specifically consent to and approve the Supplement substantially in the form of the copy referred to in such notice as on file with the Director of Public Works, such proposed Supplement, when duly executed by the City, shall thereafter become a part of the proceedings for the issuance of the Bonds. In determining whether the Owners of a majority of the aggregate principal amount of the Bonds have consented to the adoption of any Supplement, Bonds which are owned by the City or by any person directly or indirectly controlling or controlled by or under the direct or indirect common control with the City, shall be disregarded and shall be treated as though they were not Outstanding for the purpose of any such determination. Upon request, the City shall specify to the Fiscal Agent those Bonds to be disregarded pursuant to the preceding sentence.

Upon the execution and delivery by the City and the Fiscal Agent of any Supplement and the receipt of consent to any such Supplement from the Owners of not less than a majority in aggregate principal amount of Bonds Outstanding in instances where such consent is required pursuant to the provisions of this Section, this Agreement shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Agreement of the City, the Fiscal Agent and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments; provided, however, nothing in this Section shall be construed to permit the modification of the rights or obligations of the Fiscal Agent without its prior written consent.

Section 7.03. **Notation of Bonds; Delivery of Amended Bonds.** After the effective date of any action taken as hereinabove provided, the City may determine that the Bonds may bear a notation, by endorsement in form approved by the City, as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for the purpose at the Corporate Trust Office of the Fiscal Agent or at such additional offices as the Fiscal Agent may select and designate for that purpose, a suitable notation as to such action shall be made on such Bonds. If the City shall so determine, new Bonds so modified as, in the opinion of the City, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Corporate Trust Office of the Fiscal Agent or at such additional offices as the Fiscal Agent may select and designate for that purpose, without cost to each owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

ARTICLE VIII

FISCAL AGENT

Section 8.01. **Fiscal Agent**. Union Bank, N.A., having a Corporate Trust Office in San Francisco, California, is hereby appointed Fiscal Agent for the purpose of receiving all money which the City is required to deposit with the Fiscal Agent hereunder, and to use and apply the same as provided in this Agreement.

The Fiscal Agent is hereby authorized to and shall mail by first-class mail, postage prepaid, interest payments to the Bondowners, select Bonds for redemption, and maintain the Bond Register. The Fiscal Agent is hereby authorized to pay the principal of and premium, if any, on the Bonds when the same are duly presented to it for payment at maturity or upon redemption, to provide for the registration of transfer and exchange of Bonds presented to it for such purposes, to provide for the cancellation of Bonds all as provided in this Agreement, and to provide for the authentication of Bonds, and shall perform all other duties assigned to or imposed on it as provided in this Agreement. The Fiscal Agent shall keep accurate records of all funds administered by it and all Bonds paid and discharged by it.

The Fiscal Agent is hereby authorized to pay the Bonds when duly presented for payment at maturity, or on redemption prior to maturity. The Fiscal Agent shall cancel all Bonds upon payment thereof or upon the surrender thereof by the City, pursuant to Section 11.01 hereof. The Fiscal Agent shall keep accurate records of all Bonds paid and discharged and cancelled by it.

The City shall from time to time, subject to any agreement between the City and the Fiscal Agent then in force, pay to the Fiscal Agent compensation for its services, reimburse the Fiscal Agent for all its advances and expenditures, including, but not limited to, advances to and fees and expenses of independent accountants, counsel (including the allocated costs and disbursements of in-house counsel to the extent such services are not redundant with those provided by outside counsel) and engineers or other experts employed by it in the exercise and performance of its powers and duties hereunder, and indemnify, defend and save the Fiscal Agent harmless against costs, claims, expenses and liabilities of any kind whatsoever not arising from the Fiscal Agent's own negligence or willful misconduct which it may incur in the exercise and performance of its powers and duties hereunder. Such indemnity and compensation shall survive discharge of the Bonds and the removal or resignation of the Fiscal Agent. All amounts owed by the City to the Fiscal Agent shall constitute Administrative Expenses.

Section 8.02. **Removal of Fiscal Agent**. The City may in the absence of an event of default at any time, in the exercise of its sole discretion, upon thirty (30) days' prior written notice to the Fiscal Agent, remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto; provided that any such successor shall be a financial institution doing business and having a Corporate Trust Office in California having a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or state authority. If such financial institution publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such financial institution shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition

so published. The City shall notify the Bondowners in writing of any such removal of the Fiscal Agent and appointment of a successor thereto.

Section 8.03. **Resignation of Fiscal Agent**. The Fiscal Agent may at any time resign by giving written notice to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing; provided however, that in the event that the City does not appoint a successor Fiscal Agent within thirty (30) days following receipt of such notice of resignation, the resigning Fiscal Agent may petition an appropriate court having jurisdiction to appoint a successor Fiscal Agent. Any resignation or removal of the Fiscal Agent and appointment of a successor Fiscal Agent shall become effective only upon the acceptance of appointment by the successor Fiscal Agent, and notice by the successor Fiscal Agent to the Bondowners of the Fiscal Agent's identity and address.

Section 8.04. **Merger or Consolidation of Fiscal Agent**. Any company into which the Fiscal Agent may be merged or converted or with which any of them may be consolidated or any company resulting from any merger, conversion or consolidation to which any of them shall be a party or any company to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under this Agreement, shall be the successor to the Fiscal Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 8.05. **Liability of Fiscal Agent**. The recitals of fact and all promises, covenants and agreements contained herein and in the Bonds shall be taken as statements, promises, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same and makes no representations as to the validity or sufficiency of this Agreement or of the security for the Bonds or the tax status thereon, and shall incur no responsibility in respect thereof other than in connection with its duties or obligations herein or in the Bonds or in the certificate of authentication assigned to or imposed upon the Fiscal Agent. The Fiscal Agent shall have no duties or obligations other than as specifically set forth herein and no implied duties, covenants, or obligations shall be read into this Agreement. The Fiscal Agent shall be under no responsibility or duty with respect to the issuance of the Bonds for value. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Fiscal Agent shall not be liable for any error of judgment made without negligence or willful misconduct.

The Fiscal Agent shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, bond or other paper or documents believed by it to be genuine and to have been signed or presented by the proper party or parties. The Fiscal Agent may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered in accordance therewith.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a written certificate of the City, and such

certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The Fiscal Agent shall have no duty or obligation whatsoever to enforce the collection of Assessments or other funds to be deposited with it hereunder, or as to the correctness of any amounts received, but its liability shall be limited to the proper accounting for such funds as it shall actually receive. No provision in this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers.

ARTICLE IX

EVENTS OF DEFAULT; REMEDIES

Section 9.01. **Event of Default.** Any one or more of the following events shall constitute an “event of default:”

- (a) Default in the due and punctual payment of the principal of or redemption premium, if any, on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed or from mandatory redemption;
- (b) Default in the due and punctual payment of the interest on any Bond when and as the same shall become due and payable; or
- (c) Default by the City in the observance of any of the other agreements, conditions or covenants on its part in this Agreement or in the Bonds contained, and the continuation of such default for a period of thirty (30) days after the City shall have been given notice in writing of such default by the Owners of not less than twenty-five percent (25%) of the Outstanding Bonds, provided that if within thirty (30) days the City has commenced curing of the default and diligently pursues elimination thereof, such period shall be extended to permit such default to be eliminated.

Section 9.02. **Remedies of Owners.** Following the occurrence of an event of default, any Owner shall have the right for the equal benefit and protection of all Owners similarly situated:

- (a) By mandamus or other suit or proceeding at law or in equity to enforce his or her rights against the City and any of the members, officers and employees of the City, and to compel the City or any such members, officers or employees to perform and carry out their duties under the Act, the 1913 Act, any other law and their agreements with the Owners as provided in this Agreement;
- (b) By suit in equity to enjoin any actions or things which are unlawful or violate the rights of the Owners; or

(c) Upon the happening of an event of default (as defined in Section 9.01), by a suit in equity to require the City and its members, officers and employees to account as the trustee of an express trust.

Nothing in this article or in any other provision of this Agreement, or in the Bonds, shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Assessments pledged for such payment, or affect or impair the right of action, which is also absolute and unconditional, of such Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds and in this Agreement.

A waiver of any default or breach of duty or contract by any Owner shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission by any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners by the 1913 Act or the Act or by this Article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners.

If any suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to the Owners, the City and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the 1913 Act, the Act or any other law.

ARTICLE X

DEFEASANCE

Section 10.01. **Defeasance.** If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of any Outstanding Bonds the interest due thereon and the principal thereof, at the times and in the manner stipulated therein and in this Agreement, then the Owners of such Bonds shall cease to be entitled to the pledge of Assessments, and all covenants, agreements and other obligations of the City to the Owners of such Bonds under this Agreement shall thereupon cease, terminate and become void and be discharged and satisfied; provided that the covenants set forth in Sections 5.08, 6.02(d) and 8.01 shall survive the defeasance or payment of the Bonds. In such event, the Fiscal Agent shall execute and deliver to the City all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiscal Agent shall pay over or deliver to the City after payment of any amounts due the Fiscal Agent hereunder all money or securities held by them pursuant to this Agreement which are not required for the payment of the interest due on, and the principal of, such Bonds.

Any Outstanding Bond shall be deemed to have been paid within the meaning expressed in the first paragraph of this Section if such Bond is paid in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest with respect to such Bond, as and when the same become due and payable;

(b) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the Assessment Fund, the Reserve Fund and the Redemption Fund, is fully sufficient to pay the principal of, premium and interest on all Bonds Outstanding as and when the same shall become due and payable; or

(c) by depositing with the Fiscal Agent, in trust, non-callable Federal Securities in such amount as the Finance Director determines will, together with the interest to accrue thereon and moneys then on deposit in the Assessment Fund, the Reserve Fund and the Redemption Fund, together with the interest to accrue thereon without further investment, be fully sufficient to pay and discharge the principal of, premium, if any, and interest on all Bonds Outstanding as and when the same shall become due and payable; then, notwithstanding that any Bonds shall not have been surrendered for payment, all obligations of the City under this Agreement with respect to all Outstanding Bonds shall cease and terminate, except for the obligation of the Fiscal Agent to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid, all sums due thereon and except for the covenants of the City contained in Sections 5.08, 6.02(d) and 8.01 hereof. Any money or securities deposited with the Fiscal Agent to defease the Bonds shall be accompanied by a certificate of a certified public accountant confirming the accuracy of the calculations establishing the sufficiency of such deposit, and an opinion of Bond Counsel that the deposit of such money or securities will not impair the exclusion from gross income for federal income tax purposes of interest on the Bonds. Any funds held by the Fiscal Agent at the time of payment or defeasance of the Bonds, which are not required for the purpose above mentioned, or for payment of amounts due the Fiscal Agent hereunder shall be paid over to the City.

The Bonds and the original assessments shall remain in full force and effect and the Bonds shall be secured by the original Assessments until (i) the Bonds mature, (ii) Assessments are prepaid and the Bonds are redeemed, (iii) apportionment of the original Assessments occurs pursuant to Parts 10.0 and 10.5 of Division 10 of the Act, or (iv) the original Assessments are superseded and supplemented by reassessments and refunding bonds issued pursuant to Division 11 or Division 11.5 of the Streets and Highways Code, at which time the refunding escrow shall become the security for any outstanding Bonds not exchanged for refunding bonds. Any proceeds of sale of any refunding bonds may be deposited in escrow or trust with a bank or trust company and shall be secured in accordance with the laws applicable to funds of the City and shall be invested in Federal Securities.

ARTICLE XI

MISCELLANEOUS

Section 11.01. **Cancellation of Bonds**. All Bonds surrendered to the Fiscal Agent for payment upon maturity or for redemption shall upon payment therefor and any Bond purchased by the City as authorized herein shall be cancelled forthwith and shall not be reissued. The Fiscal Agent shall hold such Bonds for a period as required by law and upon destruction and a written request of the City the Fiscal Agent shall furnish to the City a certificate stating that such Bonds have been destroyed.

Section 11.02. **Execution of Documents and Proof of Ownership**. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Agreement to be signed or executed by Bondowners may be in any number of concurrent instruments of similar tenor, may be signed or executed by such Owners in person or by their attorneys appointed by an instrument in writing for that purpose, or by the commercial bank, trust company or other depository for such Bonds.

As to any Bond, the person in whose name the same shall be registered in the Bond Register shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of or on account of the principal of any such Bond, and the interest thereon, shall be made only to or upon the order of the registered Owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond and the interest thereon to the extent of the sum or sums to be paid. The Fiscal Agent shall not be affected by any notice to the contrary. Nothing contained in this Agreement shall be construed as limiting the Fiscal Agent to such proof, it being intended that the Fiscal Agent may accept other evidence of the matters herein stated which the Fiscal Agent may deem sufficient. Any request or consent of the Owner or any Bond shall bind every future Owner of the same Bond in respect of anything done or suffered to be done by the Fiscal Agent in pursuance of such request or consent.

Section 11.03. **Unclaimed Moneys**. Anything in this Agreement to the contrary notwithstanding, any money held by the Fiscal Agent for the payment and discharge of any of the Bonds or interest thereon which remains unclaimed for two (2) years after the date when such Bonds have become due and payable, if such money was held by the Fiscal Agent at such date, or for two (2) years after the date of deposit of such money if deposited with the Fiscal

Agent after the said date when such Bonds become due and payable, shall be repaid by the Fiscal Agent to the City, as its absolute property and free from trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Owners shall look only to the City for the payment of such Bonds; provided, however, that, before being required to make any such payment to the City, the Fiscal Agent shall, at the written request and expense of the City, cause to be mailed to the registered Owners of such Bonds, at their addresses as they appear on the Bond Register, a notice that said money remains unclaimed and that, after a date named in said notice, which date shall not be less than thirty (30) days after the date of the mailing of such notice, the balance of such money then unclaimed will be returned to the City. The Fiscal Agent shall hold any such moneys uninvested.

Section 11.04. **Provisions Constitute Contract; Successors**. The provisions of this Agreement shall constitute a contract between the City and the Bondowners and the provisions hereof shall be construed in accordance with the laws of the State.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and the Bondowner shall prevail, the Bondowner or the Fiscal Agent shall be entitled to receive from the Assessment District reimbursement for reasonable costs, expense, outlays and attorneys' fees including the allocated costs and disbursements of in-house counsel, to the extent such services are not redundant with those provided by outside counsel, and should said suit, action or proceeding be abandoned, or be determined adversely to the Bondowners or the Fiscal Agent, then the City, the Fiscal Agent and the Bondowners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

After the issuance and delivery of the Bonds this Agreement shall be irrevocable, but shall be subject to modifications to the extent and in the manner provided in this Agreement, but to no greater extent and in no other manner.

This Agreement shall be binding upon and inure to the benefit of the City and the Fiscal Agent, and their respective successors and assigns.

Section 11.05. **Further Assurances; Incontestability**. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Agreement.

After the sale and delivery of the Bonds by the City, the Bonds shall be incontestable by the City.

Section 11.06. **Severability**. If any covenant, agreement or provision, or any portion thereof, contained in this Agreement, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby,

and this Agreement and the Bonds shall remain valid and the Bondowners shall retain all valid rights and benefits accorded to them under the laws of the State.

If any Assessment is void or unenforceable, for any cause, or if Bonds are issued to represent or be secured by any Assessments and such issuance is not effective through the curative provisions in relation thereto under the 1913 Act or the Act to make them valid and enforceable, then an assessment shall be made in the manner and form provided by the Act.

Section 11.07. **General Authorization**. The Mayor, the City Clerk, the City Administrator, the City Engineer, the Finance Director and the Treasurer of the City are hereby respectively authorized to do and perform from time to time any and all acts and things consistent with this Agreement necessary or appropriate to carry the same into effect.

Section 11.08. **Notice**. Any notices required to be given to the City or the Fiscal Agent by the City or the Fiscal Agent, as the case may be, shall be mailed, first class, or personally delivered to the City or the Fiscal Agent at the following addresses:

City of Piedmont
120 Vista Avenue
Piedmont, California 94611
Attention: City Administrator

Union Bank, N.A.
350 California Street, 11th Floor
San Francisco, CA 94104
Attention: Corporate Trust Department

Either party may, by written notice designate a different address to which notices shall be sent.

Section 11.09. **Execution in Counterparts**. The Fiscal Agent Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City Administrator, on behalf of the City of Piedmont, and Union Bank, N.A., as Fiscal Agent, have executed this Agreement, effective the date first written above.

CITY OF PIEDMONT

By: _____
City Administrator

UNION BANK, N.A.,
as Fiscal Agent

By: _____
Authorized Officer

EXHIBIT A

REQUISITION FOR DISBURSEMENT OF COSTS OF ISSUANCE

Requisition No. ____

(Attach duplicate original of Payee's statement(s) or invoice(s))

All payments shall be made by check or wire transfer in accordance with payment instructions set forth below and the Trustee shall have no duty or obligation to authenticate such payment instructions or the authorization thereof.

Union Bank, N.A., as Fiscal Agent (the "**Fiscal Agent**"), is hereby requested to pay from the Costs of Issuance Fund established for the City of Piedmont Hills Underground Assessment District Limited Obligation Improvement Bonds, Series 2009-A, pursuant to Section 5.07 of the Fiscal Agent Agreement, dated as of July 1, 2009 (the "**Agreement**") by and between the City of Piedmont (the "**City**") and the Fiscal Agent, to the party or parties designated below as Payee(s), the sum(s) set forth below such designation, in payment of the Costs of Issuance described below. The amount(s) shown below is/are due and payable under a purchase order, contract or other authorization with respect to the Costs of Issuance described below and has/have not formed the basis of any prior request for payment.

Payee: _____

Address: _____

Purpose: _____

Amount: _____

CITY OF PIEDMONT

Signature: _____

Name: _____

Dated: _____

Title: Finance Director

EXHIBIT B

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

REGISTERED

REGISTERED

NUMBER R-___

\$

**CITY OF PIEDMONT
PIEDMONT HILLS
UNDERGROUND ASSESSMENT DISTRICT
LIMITED OBLIGATION IMPROVEMENT BOND
SERIES 2009-A**

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP NUMBER
___%	September 2, ___	_____, 2009	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

Under and by virtue of the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the Streets and Highways Code (the “Act”), the City of Piedmont (the “City”), State of California, will, out of the redemption fund for the payment of the bonds issued upon the unpaid assessments made for the acquisition, work and improvements more fully described in proceedings taken pursuant to Resolution of Intention No. 42-05 (the “Resolution of Intention”), adopted by the City Council of the City on May 2, 2005, pay to the registered owner set forth above on the maturity date stated above, the principal sum set forth above in lawful money of the United States of America. Interest on the bonds shall be payable on March 2 and September 2 of each year (each an “Interest Payment Date”), commencing March 2, 2010, payable from the Interest Payment Date next preceding the date on which this bond is authenticated, unless (i) such date of authentication is an Interest Payment Date, in which event interest shall be payable from such date of authentication, (ii) the date of authentication is after the fifteenth day of the month preceding an Interest Payment Date (whether or not such day is a business day) (the “Record Date”) but prior to the immediately succeeding Interest Payment Date, in which event interest shall be payable from the Interest Payment Date immediately succeeding the date of authentication, or (iii) the date of authentication is prior to the close of business on February 15, 2010, in which event interest shall be payable from the date of the

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bonds; provided, however, that if at the time of authentication of this bond, interest is in default, interest on this bond shall be payable from the last Interest Payment Date to which the interest has been paid or made available for payment or if no interest has been paid or made available for payment, from its dated date. Interest on this bond shall be calculated on the basis of a 360 day year, consisting of twelve 30 day months.

Both the principal hereof and redemption premium hereon, if any, are payable at the Corporate Trust Office of Union Bank, N.A., as Transfer Agent, Registrar and Paying Agent (the “**Fiscal Agent**”) in Los Angeles, California, or such other place as designated by the Fiscal Agent, and the interest hereon is payable by check mailed by first class mail, postage prepaid, to the owner hereof on the Interest Payment Date at the owner’s address as it appears on the Bond Register of the Fiscal Agent at the close of business on the applicable Record Date, except that in the case of an Owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Bonds, upon written request of such Owner to the Fiscal Agent, in form satisfactory to the Fiscal Agent, received not later than the Record Date, such interest shall be paid on the Interest Payment Date in immediately available funds by wire transfer to an account in the United States.

This bond will continue to bear interest after maturity at the rate above stated; provided, it is presented at maturity and payment hereof is refused upon the sole ground that there are not sufficient moneys in said redemption fund with which to pay the same. If it is not presented at maturity, interest hereon will run only until maturity.

This bond shall not be entitled to any benefit under the Act or the Fiscal Agent Agreement, dated as of July 1, 2009, by and between the City and the Fiscal Agent (the “**Fiscal Agent Agreement**”), or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been manually signed by the Fiscal Agent.

**THE CITY HAS DECLARED AND DETERMINED IN THE
RESOLUTION OF INTENTION THAT IT WILL NOT OBLIGATE ITSELF TO
ADVANCE AVAILABLE FUNDS FROM THE CITY TREASURY TO CURE ANY
DEFICIENCY WHICH MAY OCCUR IN THE BOND REDEMPTION FUND.**

This bond is one of a duly authorized issue of bonds designated as the City of Piedmont, Piedmont Hills Underground Assessment District Limited Obligation Improvement Bonds, Series 2009-A, issued by the City under the Act and the Fiscal Agent Agreement for the purpose of providing means for paying for the improvements described in the proceedings, and is secured by the moneys in said redemption fund and by the unpaid assessments, and the principal of and interest on this bond are payable exclusively out of said fund.

The Bonds are subject to optional redemption by the City prior to maturity, as a whole or in part in Authorized Denominations on any Interest Payment Date, upon at least thirty (30) days' written notice to the Bondowner, from moneys deposited in the Redemption Fund by the City from any source of funds legally available for such purpose at the redemption price equal to the principal amount thereof, together with a redemption premium equal to the following amounts on the following dates (expressed as a percentage of the principal amount redeemed) plus accrued interest thereon to the date of redemption (accrued interest to the redemption date is mailed separately):

<u>Redemption Dates</u>	<u>Redemption Premium</u>
[To Come]	%

If less than all of the outstanding Bonds are to be redeemed, the City shall designate the aggregate principal amount of Bonds of each maturity to be redeemed pursuant to Section 8768 of the Bond Law and the Fiscal Agent shall select the Bonds of each maturity to be redeemed by lot.

In addition, the term bonds maturing on September 2, 20__ are subject to mandatory redemption on or after September 2, 20__, by lot, at a redemption price equal to the principal amount thereof to be redeemed (accrued interest to the redemption date is mailed separately), without premium, solely from amounts deposited in the Redemption Fund pursuant to the Fiscal Agent Agreement, as follows:

<u>Redemption Date</u> <u>(September 2)</u>	<u>Redemption</u> <u>Amount</u>
20__	\$
20__	
20__	(Maturity)

In the event that the term bonds subject to mandatory redemption pursuant to the Fiscal Agent Agreement are redeemed in part prior to their stated maturity date from any moneys other than the mandatory sinking account payments, the remaining mandatory sinking account payments for such term bonds shall be reduced proportionately in each year remaining until and including the final maturity date of such term bonds.

This bond is transferable by the registered owner hereof, in person or by the owner's attorney duly authorized in writing, at the Corporate Trust Office of the Fiscal Agent, subject to the terms and conditions provided in the Fiscal Agent Agreement, including the payment of certain charges, if any, upon surrender and cancellation of this bond. Upon such transfer a new registered bond or bonds of any authorized denomination or denominations, of the same maturity, for the same aggregate principal amount, will be issued to the transferee in exchange hereof.

Bonds shall be registered only in the name of an individual (including joint owners), a corporation, a partnership, or a trust.

Neither the City nor the Fiscal Agent shall be required to make such exchanges or to register such transfers of bonds (i) during the fifteen (15) day period preceding the selection of Bonds for redemption, or (ii) selected for redemption.

The rights and obligations of the City and of the registered owners of the bonds may be amended at any time, and in certain cases without notice to or the consent of the registered owners, to the extent and upon the terms provided in the Fiscal Agent Agreement.

The Fiscal Agent Agreement contains provisions permitting the City to make provisions for the payment of the interest on, and the principal of, and the premium, if any, on any of the bonds so that such bonds shall no longer be deemed to be outstanding under the terms of the Fiscal Agent Agreement.

The City and the Fiscal Agent may treat the owner hereof, as shown on the bond register kept by the Fiscal Agent, as the absolute owner for all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary.

This bond is subject to refunding pursuant to the procedures of Division 11.5 (commencing with Section 9500) of the Streets and Highways Code of the State.

IN WITNESS WHEREOF, the City of Piedmont has caused this bond to be signed in facsimile by the Finance Director of said City and by the City Clerk of said City and has caused its corporate seal to be affixed hereon, all as of the dated date of this Bond.

CITY OF PIEDMONT

City Clerk

Finance Director

[SEAL]

[FORM OF CERTIFICATE OF AUTHENTICATION]

This is one of the Bonds described in the within mentioned Fiscal Agent Agreement, which has been authenticated and registered on _____

UNION BANK, N.A.,
as Fiscal Agent

By: _____
Authorized Signatory

[FORM OF ASSIGNMENT]

ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto

(insert social security number or taxpayer identification number) the within bond and do(es)
hereby irrevocably constitute and appoint _____
attorney to transfer the same on the bond register of the Fiscal Agent with full power of
substitution in the premises.

Date: _____

SIGNATURE GUARANTEED:

NOTE

The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever and the signature(s) must be guaranteed by an eligible guarantor institution (being banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to Securities and Exchange Commission Rule 17A(d)15.

Social Security Number, Taxpayer Identification Number or other Identifying Number of Assignee:

EXHIBIT C

REQUISITION FOR DISBURSEMENT FROM IMPROVEMENT FUND

Payment Request No. ____

All payments shall be made by check or wire transfer in accordance with payment instructions set forth below and the Trustee shall have no duty or obligation to authenticate such payment instructions or the authorization thereof.

Union Bank, N.A., as Fiscal Agent (the “**Fiscal Agent**”), is hereby requested to pay from the Improvement Fund established for the City of Piedmont Hills Underground Assessment District Limited Obligation Improvement Bonds, Series 2009-A, pursuant to Section 5.02 of the Fiscal Agent Agreement, dated as of July 1, 2009 (the “**Agreement**”) by and between the City of Piedmont (the “**City**”) and the Fiscal Agent, to the person, corporation or other entity designated below as Payee, the sum set forth below such designation, in payment of the costs of acquisition of improvements as stated below. The conditions under which this payment is to be released have been satisfied. The amount shown below is due and payable under a purchase order, contract or other authorization with respect to the costs of acquisition of improvements described below and has not formed the basis of any prior request for payment.

There has not been filed with or served upon the City notice of any lien, right to lien or attachment upon, stop notice or claim affecting the right to receive payment of, any of the moneys payable to the payee, which has not been released or will not be released simultaneously with this payment, other than materialmen’s or mechanics’ liens accruing by mere operation of law.

Payee: _____

Address: _____

Payment to be made from _____ the Improvement Fund.

Amount: _____

Purpose: _____

CITY OF PIEDMONT

Signature: _____

Name: _____

Dated: _____

Title: Director of Public Works